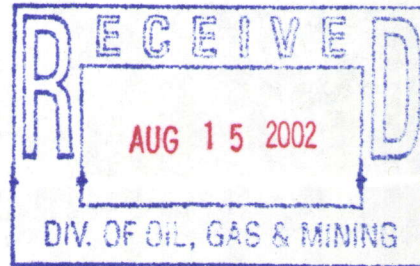




United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Moab Field Office
82 East Dogwood
Moab, Utah 84532



3809
UTU76891
(UT-062)

AUG 12 2002

Certified Mail – Return Receipt Requested
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DECISION

Deloy and Earl Shumway
Box 4
Blanding, Utah 84511

: 43 CFR 3715
: Use and Occupancy

PERMANENT CESSATION ORDER

An inspection was conducted of your Travertine #8-#9 Mine on July 18, 2002 by Denice Swanke, BLM solid mineral specialist. During the inspection no mining activity was being conducted and, other than the BLM inspector, no one was present at the mine site. The inspection revealed the following:

1. A motor home was present at the mine site which was found burned and left as debris and trash.
2. A gate was being constructed along the access road on the hill leading from the staging area up to several quarries.
3. A large flat bed trailer was present at the mine site which was found burned and left as debris and trash.

The placement of these structures at the mine site is in violation of the Federal regulations at 43 CFR 3715 as follows:

1. The structures are not reasonably incident to mining as required by 43 CFR 3715.2.
2. The placement of the structures at the mine site was never authorized as required by 43 CFR 3715.3

3. You began occupancy before receiving concurrence from the BLM in violation of 43 CFR 3715-3-6.

4. The burned equipment is not operable as required by 43 CFR 3715.2(e).

A motor home has been documented to be present at the mine site since the BLM inspected the area on July 17, 2001. You were informed by our letter dated August 7, 2001 that the placement of the motor home at the site was not identified in your notice to conduct mining operations submitted under the Federal regulations at 43 CFR 3809 and therefore is not in compliance with the Federal regulations at 43 CFR 3715 for use and occupancy under the mining laws. In the same letter, you were also notified of the information required for authorization of the motor home at the mine site as specified by 43 CFR 3715.3-2.

On September 16, 2001 you provided information to this office regarding the placement of the motor home. We notified you on November 16, 2001 of the additional information still required which you responded to on December 27, 2001. After reviewing the information and conducting a current inspection of the motor home, we notified you on February 13, 2002 of the deficiencies with your proposed occupancy requiring correction. The deficiencies were that the motor home appeared inoperable and abandoned and because of these conditions it was not an effective deterrent to the public for roaming the site and it could not serve as a guard shack. Consequently, you were required to make improvements to the motor home so it could actually be occupied by February 28, 2002 or the motor home was to be removed from the site. We never received any notification that this work was accomplished. Now that the motor home has been burned it is totally inoperable and does not meet the standard for reasonably incident as defined by 43 CFR 3715.0-5.

In your letter to this office dated December 27, 2001, you also requested the placement of a fence at the mine site. You were notified by our letter dated February 13, 2002 of the additional information required for authorization of the fence as specified by 43 CFR 3715.3-2. This information has never been received by the BLM. Lacking information to the contrary, the BLM finds that your occupancy does not meet the standard for reasonably incident (43 CFR 3715.0-5).

During the inspection conducted on July 18, 2002, the motor home at the mine site was found burned and left as debris and trash. Additionally, a gate was being constructed across the access road on the hill leading up to several quarries from the staging area. And without any previous indication to the BLM, a large flat bed trailer was present at the mine site which was found burned and left as debris and trash. This flat bed trailer is totally inoperable and does not meet the standard for reasonably incident (43 CFR 3715.0-5).

The placement of the stated items at the mine site was never authorized as required by the regulations at 43 CFR 3715.3. Also, according to the regulations at 43 CFR 3715.3-6 you must not begin occupancy if you have not received concurrence from the BLM. Furthermore, the burned equipment on the site is not an acceptable activity according to the regulations at 43 CFR 3715.2(e) which specify for the operator to use appropriate equipment that is presently operable.

Within 30 days of receipt of this letter you are to cease occupancy of the motor home, gate, and flat bed trailer as described and remove them from the premises. Also, within this time frame you must remove all trash and debris associated with the burned equipment and reclaim all disturbed areas.

Any property remaining on public lands after 90 calendar days from receipt of this order shall become property of the United States and is subject to removal and disposition by the BLM. You will be liable for the costs the BLM incurs in removing and disposing of the property (43 CFR 3715.5-2).

If, in the future, you desire to establish a residential occupancy on public lands you must be engaged in the activities described by 43 CFR 3715.2, file the information required by 43 CFR 3715.3-2, and receive written concurrence from the BLM.

In you do not comply with this order, the Department of the Interior may request, pursuant to 43 CFR 3715.7-2, the United States Attorney to begin a civil action in United States District Court for an injunction or order to prevent you from using or occupying the public lands. Pursuant to 43 CFR 3715.8, you may also face arrest and trial, under section 303 (a) of the Federal Land Policy Management Act (43 U.S.C. 1733 (a)). If convicted, you will be subject to a fine of not more than \$1,000 or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both for each offense.

Please notify Denice Swanke of the Moab Field Office by letter or phone at (435) 259-2141 upon completion of the actions required by this order.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days of receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error. This decision will remain in effect during the appeal unless a written request for a stay is granted.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

/s/ William Stringer

Assistant Field Manager
Division of Resources

Enclosures (1)

1. Federal regulations at 43 CFR 3715
2. Form 1842-1

cc: Paul Baker (w/o Enclosures)
Utah Department of Natural Resources
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Box 145801
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